

MUNN (W.P.)

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# Legislative Restriction of the Practice of Medicine.\*

BY W. P. MUNN, M. D., OF DENVER, COLORADO.

There are certain avocations, which because of their intimate relationship to those interests of humanity which are held most sacred, and because of the personal responsibility assumed by those who practice them, are very properly held by an enlightened public sentiment to be fitly subjected to legislative supervision.

Up to a certain point no American citizen denies the right and privilege of his fellow-citizen to enjoy life, liberty and the pursuit of happiness in whatever fashion best suits his fancy, but whenever any one individual in his method of attaining happiness interferes with or endangers the life, liberty or happiness of other citizens, it becomes a matter of public policy to exercise the restraining influence of legislative enactments, judicial decrees or executive prohibition. As civilization increases, so does the respect in which human life is held, and that government is most advanced which, while throwing the greatest safe-guards around the privileges of the individual, wisely, however, seeks the greatest good for the greatest number, although in so doing it may be necessary to abridge the privileges of a small minority in order to protect the lives of a large majority. This is really the great principle which underlies all legislation for the prevention or punishment of crime. It would indeed be a short-sighted policy, which by allowing the single individual wide latitude of action, would endanger the lives

of a large number of other individuals, and modern legislation recognizes this fact by its universal acknowledgment that the personal convenience of the individual must yield to considerations of safety for the general public. Thus promiscuous shooting is prohibited, although on the frontier certain individuals find great enjoyment in such an exercise of their personal liberty; thus promiscuous divorce by mutual consent is prohibited, on the ground that the limited unhappiness of the few is a lesser evil than the demoralization of the many; thus a certain length of apprenticeship and a certified reliability is required of the man who would run an engine, because human life may be terminated in awful disaster if men holding such positions are incompetent; thus ability, honesty and integrity are demanded of our judges, since the court of justice ought to be the bulwark of our liberties; thus should be demanded of our physicians unimpeachable morality, unwavering integrity, high scientific attainments and the proof of a proper medical education, for these men and women hold in their hands day after day the lives of our dearest and our noblest ones; these men and women enter into the holies of families and bear in their bosoms confidences none other may share; they are the partakers of the griefs and joys of families as no others ever are. Have the people then, not a right to demand that the law shall, so far as lies in the power of law, do all that can consistently be done to guaran-

\*A paper read before the Denver Medico-legal Society.





tee to the people the professional ability and the personal character of the men and women who are licensed by the State to practice medicine and surgery? And if, in the processes of law incidental to the rendering effective of such guarantee, certain incompetent, improperly educated practitioners, or certain individuals of improper character should suffer exclusion, does not the plea of doing the greatest good to the greatest number justify such exclusion? Are not the lives of hundreds of people of more importance than the personal inconvenience or financial disabement of one individual?

When we wish to remedy an evil, it is good policy to look it fairly in the face, study its nature and its features, before entering into any discussion of its genesis or promulgating any proposition for its removal.

So, let us briefly enumerate certain evils now existing in the medical profession in this country.

Manifestly it is an over-crowded profession, for we not only have a proportionately larger number of doctors to the population than has any other civilized country, but the over-crowding is so very great that medicine is no longer so respectable nor comparatively so remunerative a profession for the mass of its members as it is in most European countries.

Again the legitimate avenues of entrance into the profession are too many, too easily traveled and too laxly guarded. In addition the illegitimate avenues are many and wide, with many tempting allurements upon them for the ignorant, the avaricious and the unscrupulous. In some states there is no legislative fence, in others it is rickety, full of gaps and loop-holes, in yet others the fence is all right, but the executives on the inside are seemingly unaware of the use of a fence and actually assist interlopers in scaling it. The few efficient and well-enforced laws are daily and hourly menaced with destruction at the hands of men whose ignorance and cupidity know no law but their own desires, who acknowledge no personal rights the protection of which interferes with the process of pocket-filling.

Among those who have entered into practice in a legitimate manner and pursue it by legitimate methods, illiteracy is only too common. This is indeed a patent fact with regard to all of the so-called learned professions, yet in none other is it capable of doing such enormous injury, both directly and indirectly, to the mass of humanity, as well as to its individual members.

"There is no other profession,—the assertion is broadly positive, but I make it intelligently,—in which the responsibility given to, taken by or thrust upon a man is so direct, immediate and momentous. Human life hangs in the balance and may be terminated at any moment,—often, alas! is terminated,—by the incompetent and misguided, though perhaps thoroughly sincere and honest, efforts of the unskilled practitioner of medicine.

"The young lawyer does his work among his fellow-craftsmen, takes his time to do it, counsels with friends and acquaintances, stands before a learned and impartial judge, and is certain that no careless word or trivial omission can work irretrievable harm to an innocent life; the young engineer is always under the supervision of some older head, some better trained eye; the young teacher may make mistakes to-day which can be rectified to-morrow; but the young physician may be called within twenty-four hours after his graduation to cope, alone and unaided, with the most tremendous problems of his profession, involving the issues of life and death,—what he does must be done quickly or not at all, must be done rightly or better left undone; he can get no counsel perhaps, he cannot consult books or lecture notes, the crisis is here and he must meet it. How often youth and inexperience and ignorance meet it the wrong way, God only knows."

And yet it has been the rule in America, until within a very few years, in some states it is still the rule, to require less time and study preparatory to entering upon the practice of medicine than is required of an apprentice to the trade of a carpenter, machinist, gas-fitter, engineer or plumber.

Bar associations are permitted by rigid



examinations to exclude from the practice of law those whose education, either preliminary or technical, is deficient, and to expel or disbar those whose conduct has been unprofessional or criminal; this privilege is denied to the medical profession.

What is the exact nature of the evils now existing in the medical profession? What are the causes which were operative in producing the evils? Are they remediable, and if so, to what extent and in what manner can they be remedied?

The best minds of the medical profession have for years been endeavoring to answer these questions and in some states it seems that reasonable and practicable solutions of the difficulties surrounding both the educational and legislative problems, have been reached.

Briefly, and without extensive comment, this paper will endeavor to state these problems and to give a reasonable explanation of their causes with some proposed remedies therefor.

1. There is no uniform law for the whole country establishing a minimum grade of requirements for those beginning the practice of medicine.

2. There has been in the past no concerted action of the several States to make their requirements similar or identical. Some States have no requirements, others take different methods of limiting the number of practitioners, while in some good laws are rendered inoperative by lax administration or by nonsensical judicial decrees.

3. Medical degrees are almost universally regarded as conferring upon their possessors the right to practice medicine and surgery, and these degrees may or may not be conferred by reputable or *bona fide* medical colleges.

4. Medical colleges are in almost, if not all States, granted charters and the power to confer degrees without any inquiry into the genuineness of the institution, the character or ability of its incorporators or its faculty, the facilities for instruction at the command of the institution, or the requirements to be insisted upon for the granting of degrees; once established, the colleges are, as a rule, not under any supervision by the State.

5. Medical examining boards of some States are made a source of protection to incompetent practitioners instead of a source of protection against them, by political influence gaining the ascendancy in naming the members of the board, and by cliques and factions claiming equal representation in them instead of *pro rata* representation, based upon their relative numerical strength. Examining boards and reputable physicians have no possible means of defense against ignorant or vicious executives in whom the appointing power is absolutely vested.

6. The newspaper press of the country is, with a few notable exceptions, a practically solid unit in opposing any increase of requirements for, or limitations of medical practice. These people unfortunately have the public pig "by the ear," and lead it not unwillingly to the slaughter-pen of the incompetent medical practitioner.

The reason for this is plainly manifest when we consider the enormous annual subsidy paid to the newspapers by those individuals whom a properly made and properly administered law would exclude from the further practice of medicine. \$20,000,000 is the estimated expenditure every year in newspaper advertising by irregular practitioners of medicine and the patent medicine men.

As Macaulay sang years ago of another matter,

"Evil is the root, and bitter is the fruit,  
And red is the vintage—"

The root in this case being the love of money, the fruit human suffering and the vintage human blood.

There will some day arise the possessor of some more persuasive voice and more virile pen to indite the American newspaper, secular and religious, as accessories before, during and after the fact, to the murder of 50,000 men, women and children every year in the United States alone,—to the robbery of the poor of our country of \$40,000,000 a year, half of which goes into their pockets as "hush-money," otherwise known as paid advertising, and to the causation of an absolutely immeasurable amount of human suffering. The public opinion of the present day is not yet sufficiently aroused to the enormity of



this crime, but the public opinion of the future will gibbet these criminals upon the mount of condemnation.

7. The better class of medical practitioners are by no means free from blame in this matter. They make up the faculties of our medical colleges, and in their feeling of school pride are so led away by the rivalry between different colleges that they go to unjustifiable lengths in their efforts to increase the number of students, and to graduate as large classes as possible. A most pernicious policy, you may say, but it is the policy almost universally pursued by the proprietary colleges in this country to-day, and it has worked an immense amount of harm, directly to the medical profession, and indirectly to the general public. One needs not to mention the three great colleges, one in New York, one in Philadelphia, and one in Chicago, which have in the last decade done more to retard the advance of medical education than all other influences combined. Had these three schools either ceased to exist in 1880, or increased their requirements at that time, and maintained the higher requirements, even if a temporary loss of patronage resulted, I am confident that the almost universal demand for better preliminary education with four years of study and three lecture courses of nine months each, would have been promptly acceded to by every other college in the country, and that by this time a four years lecture course would be the rule instead of the exception. Certain great names in medicine must ever shine with much diminished lustre because they failed to lend their support to this grand movement.

So much for causes. Can we propose a legislative remedy which will do away not only with the evils we have described, but will at the same time abolish the causes which led to them? Can it be made at the same time so obviously fair and non-partisan that the people will indorse it and insist upon its proper execution?

A difficulty to be met at the very outset of every movement for reforms of this character is the oft-repeated but fallacious argument that it is impossible to legislate people into being moral, and that the only right way

to go about the solution of moral problems is to educate the people to such a point that they will do what is right without legislation; this point being reached legislation may be considered. How strong a hold this fallacy has upon the prejudices of ordinary law-makers cannot be realized except by those who have endeavored to introduce or to execute some reformatory measure.

The truth is that legislation, if not extreme, is the most potent educator of modern times—provided always that a really earnest and intelligent effort is made to carry the legislation into effect. Nothing is so provocative of contempt as an unenforced law.

The scientific profession should not wait for public sentiment to demand higher attainments of their individual members, but they should rather by means of agitation and legislation endeavor to arouse and create a public sentiment of the right kind.

To those objectors who denounce restrictive legislation of all kinds as "class legislation," let us reply in the language of a recent Supreme Court decision, "the welfare of the people requires protection against the consequences of ignorance and of incapacity as well as of deception and fraud."

A universal standard for all the States of the American Union is greatly needed,—whether this can be obtained better through congressional enactment or by concerted legislative enactments of the several States, is a question yet to be decided. At the present time an effort is being made to have the latter method tried; if that fails the National Congress may yet be appealed to.

The license to practice should no longer be dependent simply upon the possession of a degree or diploma from any college or university. It should be the prerogative of the State or the National authorities to license only those persons who present satisfactory evidence of proficiency in medical science, and who have devoted a sufficiently long time to study and to hospital service in properly accredited institutions. The degree of bachelor or of doctor of medicine should not entitle its holder to practice, but its possession should be an absolute prerequisite to the examination for a license to practice.



There are far too many medical colleges in America. Those colleges whose course of instruction does not conform in every particular to a certain fixed standard, and whose facilities for instruction are insufficient, should have their power to confer degrees revoked. No new college should be granted a charter unless it presents to the examining board sufficient evidence of a proper equipment, proper standards for admission, a sufficiently long and thorough course of instruction and a guarantee to maintain a reputable faculty.

An annual inspection of the college should be made by the State or the National authorities, to determine whether the requirements are being carried out in good faith. If any evidence of laxity or inefficiency is found, its correction should be required on penalty of revocation of charter.

I believe that each and every medical college should require each and every student to pass an examination before admission, which examination should be an actual and not a make-believe one; it should be at least as rigid as that usually required at the end of the freshman year in our good literary colleges, and should embrace the same subjects. This requirement, properly enforced, will insure a class of medical students who have not only a fair English education, but enough of Latin and of Greek to enable them to appreciate the meaning of medical terms; above all they will have already acquired a training in proper methods of study and will be able to study science in a scientific manner.

Every student of medicine ought to attend four graded courses of lectures, spend a year in some good general hospital before beginning general medical practice. This, I am aware, may seem to many of you an extreme demand at the present time. The three-year lecture course has been so recently adopted by the colleges, that many think it best to pause and make sure of what has already been gained before demanding greater concessions. But the movement for still greater improvements in medical education has begun, and it may not be stayed by any opposition. It will be the wiser course to throw our influence in favor of this growing

movement and take what part of the credit may legitimately be ours. The twentieth century, I venture to say, will not pass its first decade until every respectable teaching institution of medicine in the land will have adopted the four years course.

The legislation which the medical profession demands, should embody these conditions placed upon medical colleges, and when such an enactment is upon the statute books we will have the proud consciousness that the profession has at last done its duty to itself.

The State Medical Examining Boards should be composed of the best medical men, and cliques or factions should not control their makeup. It is a notorious fact that when the appointing power of such boards is invested in a State's executive, he is too apt to grievously abuse it. No power on earth can prevent an ignoramus or a low political trickster whom the fortune of politics has placed in the executive chair, from prostituting his official privileges and making appointments to such vitally important bodies, for political reasons pure and simple. I am in favor of taking from the executive the absolute power of naming the members of State Boards of Medical Examiners and vesting it to a certain extent in representative medical associations.

There is but one Science of Medicine, although the State illogically and ignorantly recognizes three so-called "schools." However, accepting the legal and ignorant fiction as a fact, I would suggest that, in order to secure examiners who are really representative and who have the proper scientific attainments, each of the three State societies shall annually nominate to the Governor certain of their members, whose number shall be twice their estimated pro rata representation, and that from the lists so submitted, the Governor shall nominate the State Board of Medical Examiners, giving to each society a representation proportioned as exactly as possible to their relative number of legally licensed practitioners in the State.

The legal profession may not at first properly appreciate the reasons which animate this proposal. I need only ask them what



would be the feeling of all decent lawyers if it were not only a possibility but an accomplished fact, that some ignorant shyster of the kind who advertise "advice free," or "divorces obtained without publicity," should be by gubernatorial favor placed on the Supreme bench of the State. Not only lawyers, but all good citizens, would deplore such an event, and unite their influence to prevent its occurrence a second time. Doctors feel much the same way in reference to their examining boards, and hope for the sympathy of all lawyers and all good citizens in preventing any further degradation of the profession by political influence.

Having thus secured a fairly representative, well-qualified and capable Board of Examiners, it should be given full power to increase the requirements as rapidly as the circumstances permit, until they are, at least, as high as those which I have crudely outlined for a standard course of medical study. In addition, the Board should be invested with the right to re-examine, at stated intervals, all physicians who are already licensed, and to withdraw or modify said license, if for any reason the holder is no longer qualified for medical practice. This will be an incentive to lazy or indifferent practitioners to keep up with the times. Above all, the Board should have the right to rescind a license upon proper proof presented to any judiciary of the State, of unprofessional or improper conduct, or to summarily withdraw the license if its holder has been convicted of any criminal offense. At this time there are men engaged in the practice of medicine in

this city who have been convicted of performing criminal abortion, and have served a term in the penitentiary on account of it. So then, the situation is practically this—our law has been so interpreted that the man convicted of abortion or of rape returns to a profession which he may easily prostitute to the service of his baser passions, and to his own inordinate love of money. Practically, the law sanctions a repetition of his crimes.

These things ought not to be.

The law should protect, not the medical profession only, although we are entitled to a much greater share of protection than we receive, but it should also protect the people, defenseless women, suffering children, ignorant and deluded men, from those who prey upon them without lèt or hindrance. And as the people themselves are ignorant and blind; as the newspapers, the only avenues by which information can reach them, have been already seized by the enemy and are permanently held by virtue of the \$20,000,000 a year bribe, the medical profession must ask for them justice, through and by means of, legislative restriction of medical practice.

This paper has been of necessity sketchy in outline and more or less disconnected in argument; imperfect in its presentation and perhaps ultra-positive in expression, but if it has presented the crying necessity of more and better laws in protection of the people against "incapacity and ignorance as well as against deception and fraud," in such a manner as to awaken sympathy and induce co-operation, it will have served its purpose.





